

REMARKS

Applicants submits this Request for Continued Examination in view of the Decision on Appeal, decided January 8, 2009.

In the Appeal, the Examiner's decision to reject Claims 1-26 under 35 U.S.C. § 103(a) was affirmed.

Based on comments in that Decision, Applicants have further amended the claims.

In particular, in the Analysis section beginning on page 7 of the Decision, it was noted the Board selected independent claim 1 as being representative of the cited claims. In that regard, the Board noted that various arguments presented by the Appellants were not commensurate with the claimed invention.

More specifically, it was noted the claims did not recite "the same documents that can be assigned to both first and second clusters" or "the ability to assign", as stated in Appellants' arguments.

Therefore, an issue addressed on appeal was whether the combination of Heckerman and Fohn disclosed "performing a clustering process that creates a hierarchy of clusters that reflects a segregation of the documents in the collection based on the words included in the documents, wherein any document in the collection may be assigned to a first cluster in the hierarchy based on a first segment of the respective document, and the respective document may be assigned to a second cluster in the hierarchy based on a second segment of the respective document." In reviewing the claims, the Board argued that the claims in the present application did not place any limitations based on the use of "may be" throughout various portions of the claim. In view of this, the Board said their analysis will not read such "must be capable" or "at the same time" or the lack of "mutually exclusive" language in the claims. In view of this, Applicants have amended independent claims 1, 8, 20, 22 and 23 to more explicitly recite that this is occurring. In other words, as the Examiner has noted, that by using "may be", something may not be (*i.e.*, page 9). Thus, while the specification by using the term "may be" then allows for both opportunities, these claims now recite specifically that it is occurring (1 and 8) and that assignments to different clusters are being made at the same time (please see page 9 of the Decision).

In view of the more explicit restrictions now set forth in the claims, it is requested the claims be examined.

Turning now to independent claims 10 and 15, Applicants have further defined the claims in a manner not taught or suggested in the prior art.

Similarly, claims 12, 13 and 14 also have been amended to incorporate details not taught or suggested in the cited art.

Applicants also request the Examiner to reconsider the content of dependent claim 26, as Applicants do not believe it has been fully explored by the Examiner.

CONCLUSION

For the reasons detailed above, Applicants submit the claims are distinguished from the cited art and are now in condition for allowance.

☒ Remaining Claims, as delineated below:

| (1) FOR | (2) CLAIMS REMAINING AFTER AMENDMENT LESS HIGHEST NUMBER PREVIOUSLY PAID FOR | | (3) NUMBER EXTRA |
|--------------------|--|--------|------------------|
| TOTAL CLAIMS | 26 | - 26 = | 0 |
| INDEPENDENT CLAIMS | 10 | - 10 = | 0 |

☒ This is an authorization under 37 CFR 1.136(a)(3) to treat any concurrent or future reply, requiring a petition for extension of time, as incorporating a petition for the appropriate extension of time.

☒ The Commissioner is hereby authorized to charge any filing or prosecution fees which may be required, under 37 CFR 1.16, 1.17, and 1.21 (but not 1.18), or to credit any overpayment, to Deposit Account 24-0037.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Mark S. Svat, at Telephone Number (216) 363-9000.

Respectfully submitted,

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3-9-09

Date



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